

GIFTS TO AN AGENCY—PART 2
FPPC FORM 801—REGULATION 18944.2
QUESTIONS AND ANSWERS

Since posting the June 2008 Questions and Answers sheet about Regulation 18944.2 and the requirement for state and local agencies to disclose gifts on Form 801, the FPPC has received many additional questions, which are discussed below.

But first, some tips:

Many callers have asked about payments that are not covered by Regulation 18944.2. Before attempting to determine whether a particular third party payment or donated item can be accepted as a gift to the agency and whether it must be reported on Form 801, it is important to note the following two key elements:

- 1) The payment (or item) must provide a **personal benefit** to a public official that would otherwise result in a gift to the official; and
- 2) In order for an agency to convert the payment into an agency gift rather than a gift to the official, the payment may only be used for **official agency business**. (There are additional requirements that must be met, as specified in the regulation.)

It may be helpful to review the following questions when analyzing a particular third party payment:

- Will the payment be used for “official agency business”? If the purpose of the payment is solely personal in nature, the agency cannot accept the gift. The official who receives the benefit of the gift may have to report it on a statement of economic interests (Form 700) and it may be subject to the gift limit.¹ Carefully review Regulation 18944.2 to be certain that all of its requirements can be met.
- Is the payment a gift at all? If a third party payment is strictly intended to benefit the agency and will result in no personal benefit to a public official, Regulation 18944.2 does not apply and Form 801 is not required. In addition, even if an official will benefit from a payment, another exception may apply. Review the FPPC's regulations related to gifts, particularly the exceptions to the definition of “gift”. (See FPPC Regulations 18940 – 18946.) For example, there are exceptions for certain types of informational materials provided to public officials as well as for in-state travel in connection with making a speech. Gifts can be returned, unused, or reimbursed within 30 days. If a third party payment would not be considered a gift to a public official because it meets an exception to the definition of “gift” in the Political Reform Act or FPPC regulations, it also is not required to be disclosed as an agency gift on Form 801.
- Is the payment covered by a different statute or regulation? There are separate rules for the receipt by an agency of tickets and passes. (Regulation 18944.1.) In addition, Gov. Code Section 89506 allows public officials to receive certain payments for travel that are not subject to the gift limit, although they are reportable on the Form 700. Elected officials who solicit payments from outside sources for legislative, governmental, or charitable purposes may have to disclose them as “behested (or cosponsored) payments” under Gov. Code Section 82015(b)(2)(B)(iii).

¹ Gifts totaling \$50 or more received during a calendar year from a single source are reportable on Form 700. Gifts received from a single reportable source are limited to \$390 in a calendar year through the end of 2008. The gift limit for 2009-2010 will be \$420. Officials specified in Gov. Code Section 87200 must disclose gifts from all sources unless an exception applies. For employees designated in an agency's conflict-of-interest code, disclosure and application of the gift limit are determined by the employee's disclosure category.

Questions and Answers

1. *Vendors in our jurisdiction donate items to the agency (e.g., food, gift baskets, gift cards, vacations) specifically for the personal benefit of the agency's employees in connection with holiday or employee recognition events. How are these items reported?*

A. These payments are solely personal in nature and cannot be converted to agency gifts because they cannot be used for "official agency business." If an official receives such a gift with a value of \$50 or more as an award or as part of an employee raffle, the gift may be reportable on the official's Form 700 and subject to the gift limit. The vendor would be considered the source of the gift and the agency is acting as an intermediary for the gift.

2. *A government agency has a policy that requires each employee who receives a gift from a vendor or other entity in connection with work activities to turn the gift over to the agency's finance department. Employees may later win the gifts in an agency-sponsored raffle, or receive them as part of an employee recognition or holiday event. Are these gifts reported on Form 801?*

A. No. Again, the gifts are personal in nature and cannot be used for "official agency business." If an employee receives a gift from a third party and turns it over to the agency within 30 days, the employee is no longer the recipient of a gift. However, when the agency distributes the items as part of an employee raffle or an award, the employees who receive them may have received gifts from the agency and may be required to disclose the gifts on their Form 700. Consult with the FPPC to determine what rules apply in making this determination.

3. *Businesses in our city often donate goods and services for city-sponsored community events, such as our Fourth of July parade, and during emergencies. Is the city required to report these payments on Form 801?*

A. No. Because public officials are not receiving a personal benefit from these payments, they are not considered gifts that would trigger the Form 801. If elected officials solicit payments for the events, they may be required to disclose them as "behested (or cosponsored) payments."

4. *What if city employees who attend the parade or are required to work during an emergency consume the donated food or beverages?*

A. Generally, these would not be considered gifts to the officials and would not require reporting on a Form 801 or Form 700. However, the answer to questions of this nature will depend on the facts surrounding the event, so requesting advice from the FPPC is recommended.

5. *If an agency accepts a gift and discloses it on Form 801, is the official who benefits from the gift required to disclose it on his or her Form 700?*

A. No. If all of the requirements of Regulation 18944.2 are met and the agency accepts the gift, the agency will complete Form 801 and the official is not required to disclose the payment. If the requirements of Regulation 18944.2 are not met and the official receives a gift, the agency is not required to complete Form 801. The official may be required to disclose the gift on his or her Form 700.

6. *A local government agency arranges tours of its facilities for officials of other government agencies. The tours usually involve travel, lodging, and meals. May an agency accept these payments as an agency gift and disclose them on Form 801?*

A. There are several factors to consider. First, agencies may not accept travel payments for elected officials and officials specified in Gov. Code Section 87200 as an agency gift under Regulation 18944.2. In addition, the donor agency may not designate specific officials who will attend

the tours. However, Gov. Code Section 89506 allows public officials to accept travel payments from other government agencies and certain educational and nonprofit organizations if the travel is related to an issue of public policy. A public official who receives or benefits from these payments may be required to report them on Form 700, but they are not subject to the gift limit. For non-elected and officials not covered under Section 87200, if the requirements of Regulation 18944.2 are met, the agency can accept the travel and lodging and disclose the payments on Form 801. The meals are gifts to the officials who consume them and may not be accepted as an agency gift.

7. *If the requirements of Regulation 18944.2 are met but the official who benefits from the gift is not designated in the agency's conflict-of-interest code to file Form 700, must the agency report the gift on Form 801?*

A. Yes.

8. *If the requirements of Regulation 18944.2 are not met and the agency cannot accept a gift, are officials also prohibited from receiving the gift?*

A. No, but the official who receives the gift may be required to disclose it on his or her Form 700 and it may be subject to the gift limit.

9. *If the official who benefits from an agency gift holds positions with more than one government agency, which agency should complete and post the Form 801.*

A. Form 801 is an **agency** report. The agency that received the gift must complete and post the Form 801. It does not matter where the official works.

10. *The regulation requires that the Form 801 be retained for four years. How long must the agency maintain the Form 801 on its website?*

A. Four years.

Recent Advice Letters

The Commission has also issued the following advice letters since Regulation 18944.2 was amended. Copies of advice letters are available through Westlaw and Lexis-Nexis, or you can request copies from the Commission.

Gault, No. A-08-127
Tanner, No. I-08-130
Smith, No. I-08-132
Hentschke, No. I-08-166